

REMARKS

Overview

In the current Office Action issued on January 10, 2008, the status of the pending claims is as follows: claims 1-2, 7-19, 32-74 and 77-87 are rejected under 35 U.S.C. § 103(a) as being obvious in light of Bilibin et al. (U.S. Patent Application Publication No. 2005/0197892) in view of Philippe et al. (U.S. Patent Application Publication No. 2004/0098316).

Applicants hereby amend claims 1, 16-17, 35, 43-45, 54, 59, 61-63, 68, 71, 77 and 79-80 in order to clarify the subject matter of their invention, and further hereby cancel claims 2 and 78. Thus, claims 1, 7-11, 13-19, 32-74, 77 and 79-87 are now pending.

Discussion

Administrative Issues

As a threshold matter, Applicants note that the current Office Action dated January 10, 2008 was incorrectly designated as being “Final”, and thus Applicants request that the Examiner withdraw the finality of the current Office Action and treat this Amendment as responsive to a non-final Office Action. In particular, in the current Office Action, the Examiner rejected claims that were un-amended based on a new ground of rejection that included a newly cited reference – for example, independent claim 63 had previously been rejected as being anticipated by Bilibin, and although claim 63 was un-amended in Applicant’s prior Amendment dated October 17, 2007, the Examiner has now changed the basis of rejection for un-amended independent claim 63 so that it is now rejected as being obvious and on the basis of Philippe as well. As MPEP Section 706.07 makes clear, however, it is improper to make an Office Action final when a new ground of rejection is used that “is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement” (MPEP, 706.07(a)), and neither of those conditions allowing the Office Action to be made final were satisfied in this case.

In addition, Applicants would like to thank Examiner Plucinski for her consideration during the telephone interview with Applicants’ representative on March 7 and 21, 2008 for this application. During the interview, the Examiner agreed that the current Office Action was

incorrectly made final, and that she would withdraw the finality of the current Office Action. The Examiner also agreed that Bilibin and Philippe failed to disclose some aspects that were discussed during the interview, and further indicated two additional prior art references that may have some relevance to the pending claims, those being Wilson et al. (U.S. Patent Application Publication No. 2002/0133387) and Huang et al. (U.S. Patent No. 6,151,582). Applicants have amended the independent claims 1, 16, 54, 59, 62, 63 and 77 in a manner similar to that discussed during the telephone interview, and believe that all of the pending claims are patentable over the cited prior art references.

Rejections Based On Prior Art

The Examiner has rejected each of the previously pending claims as being unpatentable over a combination of Bilibin and Philippe. However, various of the pending claims as rejected and as currently amended include features and provide functionality not disclosed or suggested by Bilibin or Philippe, and thus are allowable over those references.

The pending claims are generally related to enhancing operation of a merchant or other item ordering service by automatically identifying multiple alternative fulfillment plans that are options for the merchant to use to fulfill an order from a customer for one or more items, and by automatically determining information about how use of particular fulfillment plan options will affect fulfillment of the order. For example, before receiving an order from a customer for one or more items, the described techniques may be used to automatically select a preferred one of multiple alternative fulfillment plan options for fulfilling the order, such as to enable the customer to receive information about an actual delivery date of the one or more items to the customer (or other recipient) if the customer places the order using a particular fulfillment plan. In at least some embodiments, the merchant or other item ordering service that fulfills orders may have multiple alternative item distribution centers to use in fulfilling orders, such as item distribution centers that are geographically distributed in various locations and that each carry inventory for various items, and may consider alternative fulfillment plans that include using various of the distribution centers as part of the order fulfillment processing.

As one example of features and functionality that are not taught, suggested or otherwise obvious in light of Bilibin and Philippe, various of the pending claims recite that a merchant or online order service determines multiple alternative options for fulfilling an order using multiple

alternative, geographically distributed item distribution centers of the merchant. Furthermore, various of the pending claims recite that the alternative fulfillment plan options are each evaluated to determine actual delivery date and/or other information for that fulfillment plan option based at least in part on determined processing that will occur at the item distribution center(s) if the order is fulfilled using that fulfillment plan option, such as to determine a cost of use of each fulfillment plan option. For example, independent computer-implemented method claim 1 as amended recites the following:

. . . automatically determining multiple geographically distributed item distribution centers that are maintained by the item ordering service and that are each available as an alternative to supply the items to the customer if an order is received from the customer for the items, each of the determined item distribution centers having distinct current inventory that includes the items;

automatically determining multiple distinct alternative fulfillment plans for supplying the items to the customer that are each associated with one of the determined item distribution centers such that each of the determined item distribution centers has at least one associated fulfillment plan, each fulfillment plan indicating that the items are to be shipped from the item distribution center associated with the fulfillment plan and indicating a manner of shipping the items from the associated item distribution center to the customer and indicating information about processing that would take place at the associated item distribution center as part of the fulfillment plan to prepare the items for the shipping to the customer;

for multiple of the determined distinct fulfillment plans,

determining a cost of use for that fulfillment plan if the items are supplied using that fulfillment plan; and

determining an actual delivery date for that fulfillment plan on which the customer will receive the items if the items are supplied using that fulfillment plan, the determined actual delivery date being based at least in part on the indicated manner of shipping the items for that fulfillment plan and being based at least in part on the indicated information about the processing that would take place at the associated item distribution center for that fulfillment plan; and

providing to the customer an indication of each of multiple of the determined fulfillment plans as options for supplying the items to the customer, each indication of a determined fulfillment plan option including the determined cost of use and the determined actual delivery date for that determined fulfillment plan option; and

after an indication from the customer to use a selected one of the indicated determined fulfillment plan options as part of an order for the items, indicating to place the order for the items using the selected fulfillment plan,

so that the customer will receive options for how an order is to be fulfilled and will receive accurate delivery date information for the order prior to order placement.

Independent method claim 16 as amended similarly recites the following:

. . . before receiving the request to initiate the ordering process to order the items,
automatically determining multiple fulfillment plans that are options for fulfilling an order for the items, each fulfillment plan indicating one or more distribution centers . . . [that are] a selected subset of multiple alternative distribution centers of a merchant that each are available to supply at least one of the indicated items;
for each of at least some of the determined fulfillment plans, automatically determining a time of actual delivery of the items if that fulfillment plan is used to fulfill the order and determining a cost for fulfilling the order if that fulfillment plan is used to fulfill the order, the determining of actual delivery time based at least in part on information determined about processing that would take place at the distribution centers indicated by the fulfillment plan . . . , the processing that would take place at those indicated distribution centers for that fulfillment plan including preparing the items for the transporting of the items from those indicated distribution centers;
selecting one of the at least some determined fulfillment plans to be used for fulfilling the order based at least in part on the determined actual delivery time for the selected fulfillment plan and based at least in part on the determined cost for the selected fulfillment plan; . . .

The other independent claims 54, 59, 62, 63 and 77 each recite similar language for some or all of the indicated features.

Conversely, Bilibin and Philippe appear to lack any teaching or suggestion to have or use any of these features in the manner claimed, and would likely result in an inoperable system if extended to attempt to use the claimed features. For example, as a non-exclusive list of missing teaching and suggestion in Bilibin and Philippe, neither of these prior art references has any notion of a single merchant that maintains multiple distribution centers and chooses between them in determining how to fulfill orders, and neither has any idea of evaluating alternative fulfillment plan options based on considering processing that would occur at a distribution center or on determining costs associated with using such alternative fulfillment plan options.

With respect to Bilibin, it appears to generally disclose that an auction seller may currently have possession of an item that is to be auctioned, and may benefit from assistance in shipping that item to an auction buyer. Accordingly, the Bilibin system allows such an auction seller to specify multiple alternative shipping companies that may be used to ship the item from a single starting location to a destination location of a buyer, and to obtain shipping prices

corresponding to use of those shipping companies. However, the Bilibin system does not describe or suggest multiple alternative fulfillment plans as claimed, and further provides no support for the use of multiple alternative item distribution centers in the manner claimed. In particular, in Bilibin, the single starting location of the item being auctioned appears to be fixed by the auction seller before the shipping prices are obtained (e.g., the item is to be picked up from the seller's home, or the seller will drop off the item at a designated Mail Boxes Etc. store or other designated third-party location) – since the item location is fixed, and furthermore since the auction seller typically has only a single copy of the item that he/she is selling, it would not make sense for the seller to attempt to have or use multiple alternative geographically distributed item distribution centers that each have copies of the item for use in fulfilling orders from customers. Furthermore, since Bilibin lacks the idea of any distribution centers, it has no reason to consider evaluating a fulfillment plan option based on considering processing that would occur at one or more distribution centers.

With respect to Philippe, while it appears to consider multiple unrelated retailers as possibilities for supplying a particular item to a customer, it does not appear to include any indication that any of those retailers maintain multiple distribution centers, or that any information about any such multiple distribution centers is used as part of selecting between alternative retailers. Furthermore, as noted above, there does not appear to be any indication of considering particular processing that would occur at even a single distribution center of one of the retailers. At best, Philippe may display to a customer whether a particular retailer has an item in stock or not, but does not appear to use that information in any other way, or include any consideration of processing that would occur at various retailers' distribution centers.

Furthermore, no reason is apparent why one of skill in the art would be motivated to modify the Bilibin and/or Philippe systems to include the claimed features and techniques. Applicants note that the Supreme Court recently emphasized in its *KSR v. Teleflex* ruling (U.S. Supreme Court, 2007) that a finding of obviousness needs to be supported by an explicit reason that one of skill in the art would have been motivated to modify existing systems or techniques to achieve the claimed systems or techniques. In this situation, one example of why one skilled in the art would not have a reason to combine the Bilibin and Philippe systems to achieve the benefits of Applicants' inventive techniques recited in the pending claims is that a combination of these Bilibin and Philippe systems would fall far short of Applicants' inventive techniques,

and would not provide the benefits of Applicants' inventive techniques. In particular, such a combination of Bilibin and Philippe would result in the system of Bilibin that allows alternative shipping companies to be used to send an item of the seller to a recipient, with Philippe's techniques being used by the seller to obtain the item from alternative retailers before sending the item to the recipient. Alternatively, Philippe's techniques for identifying multiple retailers that can supply an item to a recipient may be combined with one or more of those retailers providing options for shipping the items using alternative shipping companies. However, either of these combinations fails to include or motivate a variety of the recited claim elements previously discussed, such as a single merchant maintaining multiple distribution centers and choosing between them as alternatives in determining how to fulfill orders, and evaluating alternative fulfillment plan options based on considering processing that would occur at a distribution center. Accordingly, no reason has been demonstrated why one of skill in the art would be motivated to modify the Bilibin and Philippe systems to include the various claimed elements that those systems lack, and all of the pending claims are further patentable for this reason as well.

Thus, for at least these reasons, the pending independent claims are patentable over Bilibin and Philippe. In addition, the pending dependent claims include the features of those claims from which they depend, and are thus allowable for the same reasons as those claims. Moreover, the pending dependent claims also recite additional features lacking in the cited references, and are thus allowable on the basis of those features as well, although these additional features are not enumerated here for the sake of brevity.

As previously noted, during the telephone interview with Applicants' representative on March 7 and 21, 2008, the Examiner indicated two additional prior art references, those being Wilson et al. (U.S. Patent Application Publication No. 2002/0133387) and Huang et al. (U.S. Patent No. 6,151,582). While the pending claims are not rejected on the basis of these additional prior art references, Applicants have included brief remarks regarding these prior art references to facilitate the advancement of prosecution for this application.

In particular, in a manner similar to Bilibin and Philippe, Wilson and Huang appear to lack any teaching or suggestion to have or use any of several claimed features. For example, neither of these prior art references has any idea of evaluating alternative fulfillment plan options based on considering processing that would occur at a distribution center or on determining costs

associated with using alternative fulfillment plan options. In particular, Huang appears unrelated to performing any type of fulfillment of pending orders, and instead generally describes various techniques for performing supply chain management activities. While Wilson does appear to discuss techniques related to fulfilling orders, Wilson appears to lack any discussion of evaluating alternative fulfillment plan options based on considering processing that would occur at a distribution center or on determining costs associated with using such alternative fulfillment plan options, and instead appears to focus on the straightforward technique of merely fulfilling an order from a customer using the closest distribution center to that customer that has the items of the order. In this manner, Wilson teaches away from using Applicants' more sophisticated techniques to evaluate various alternative fulfillment plans using multiple different distribution centers, such as based on relative costs and delivery dates for those alternative fulfillment plans. Furthermore, no reason is apparent why one of skill in the art would be motivated to modify the Wilson and/or Huang systems to include the claimed features and techniques that they lack, or to modify the Bilibin and/or Philippe references to include techniques described in the Wilson and Huang systems.

Thus, for these reasons as well, the pending claims are believed to be patentable.

Conclusion

In light of the above remarks, Applicants respectfully submit that all of the pending claims are allowable. Applicants therefore respectfully request the Examiner to reconsider this application and timely allow all pending claims. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 694-4815.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,
SEED Intellectual Property Law Group PLLC

/James A. D. White/
James A. D. White
Registration No. 43,985

JDW: dd

701 Fifth Avenue, Suite 5400
Seattle, Washington 98104-7092
Phone: (206) 622-4900
Fax: (206) 682-6031